

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 639/1998
(State of Rajasthan V/s Fateh Mohd. and Ors.)

Date of Order : 02/07/2007

PRESENT
HON'BLE MR. JUSTICE H.R.PANWAR

Mr. J.P.S.Choudhary, P.P. for the petitioner.
Mr. Ashok Patel for the respondents.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the State of Rajasthan has challenged the order dated 24.7.1997 passed by learned Additional Sessions Judge No.3, Jodhpur (for short 'the revisional court' hereinafter) in Criminal Revision No. 11/95 whereby the revision petition filed by the State against the judgment and order dated 2.3.1994 passed by Additional Chief Judicial Magistrate No.4, Jodhpur (for short the trial court' hereinafter) discharging the accused respondents for the offences under Sections 467, 471/ 120B IPC, was dismissed.

I have heard learned public prosecutor and the counsel appearing for the respondents. Perused the order impugned.

The facts and circumstances giving rise to the instant criminal misc. petition are that complainant Anantram, power of

attorney holder of Satish Soni, Madan Gopal and Natwar Gopal filed a complaint for the offences noticed above. It is alleged that the respondent Fateh Mohd. And Smt. Rukiya forged the document and transferred the land of the complainant. The complainant came with a case that the disputed land belongs to Smt. Hamida Khanam and Smt. Hamida Khanam sold the same to Mahaveer Mehta, whereas the accused respondent Fateh Mohd. And his earlier wife Smt. Rukiya executed a power of attorney in favour of one of the respondents namely Polaram who in turn transferred the land in favour of other respondents. So far as the execution of the power of attorney by the respondent Fateh Mohd. in favour of respondent Polaram is concerned, there is no allegation of forging of document. It also appears that a civil suit has been filed with regard to the very land by Smt. Hamida Khanam. In the civil suit, it has come that accused Fateh Mohd. in para 2 and 4 of the pleadings stated that the disputed land was his self acquired property and his wife Smt. Hamida Khanam has no title to that property though in love and affection her name has been shown in the title clause but infact it was the property owned by the respondent Fateh Mohd. and the respondent Fateh Mohd. being the sole owner of the property as it was his self acquired property, executed the power of attorney in favour of respondent Polaram who in turn transferred the property in favour of other respondents. The trial

court as well as the revisional court came to the conclusion that by executing the power of attorney by respondent Fateh Mohd. in favour of Polaram, there is no forging of document. Even in the civil suit, title of Fateh Mohd. has been established as the disputed property was his self acquired property. The trial court as also the revisional court came to the conclusion that there is prima-facie no evidence connecting the respondents in forging of document. So far as execution of power of attorney in favour of Polaram by respondent No.1 and subsequent transfer of the land is concerned, in my view, there has not been any forging of document or any element of cheating. All these facts have been narrated in the transfer deed. Thus, there is absolutely no element of fraudulent or dishonest intention of the power of attorney holder as also the purchaser of the land in dispute. The civil court has concluded that the true owner of the land in dispute is Fateh Mohd. and respondent fateh Mohd. having executed a power of attorney in exercise of his right and title in favour of respondent Polaram. On these premises, the trial court as also the revisional court came to the conclusion that prima-facie there is no material to conclude that there had been any forging of document or criminal conspiracy. The State having availed a revision as provided under Section 397 Cr.P.C. has filed the instant criminal misc. petition. The instant petition is nothing but a second revision which is otherwise barred by law. Even

otherwise, on close scrutiny of the material available on record, in my view, both the courts below were justified in discharging the respondents. It cannot be said that the orders impugned would result in serious miscarriage of justice or abuse of the process of the Court. It is settled law that power under Section 482 are to be exercised sparingly and in exceptional cases. The case in hand is not of that nature warranting any interference.

In this view of the matter, I do not find any merit in the criminal misc. petition and it is dismissed accordingly.

(H.R.PANWAR),J.

rp